

## **REMARKS/ARGUMENTS**

### **1. Summary of the Office Action**

Claims 1-17, 29-33, 35-47 are allegedly under 35 U.S.C. 103(a) as being unpatentable over Rackson et al (U.S. Patent No. 6,415,270) in view of Fisher et al (U.S. Patent No. 6,243,691).

### **2. Response to § 103 Rejections**

Applicants respectfully traverse this rejection for the reasons set out below, and ask the Examiner for reconsideration.

To establish a **prima facie** case of **obviousness**, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

### **A. THE PRIOR ART REFERENCES DO NOT TEACH OR SUGGEST ALL CLAIM LIMITATIONS OF CLAIMS 1 AND 17, WHETHER CONSIDERED SINGULARLY OR IN COMBINATION.**

Claim 1 reads as follows:

1. A networked sales method, comprising:  
presenting, via a first network item, information associated with an item on a sales screen to a user;  
**communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item;**

**receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of price selections for the item; and**

notifying the user when the entry in the variable price schedule is reached.

Neither Rackson nor Fisher, whether considered separately or in combination, disclose **“communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item,”** as required by claim 1.

Rackson discloses a multiple auction coordination method and system, where a user (a seller) selects an auction service in order to sell an item. *The user* in Rackson then *provides a reserve price for the item, to the auction service.* (Rackson, 8: 29-37.) *A user providing a reserve price for the item to the auction service* is in stark contrast with **“communicating a variable price schedule for the item to the user,”** as required by claim 1. Furthermore, *a reserve price for the item* disclosed in Rackson is distinct from a **“variable price schedule including a plurality of price selections for the item,”** as required by claim 1.

Similarly, Fisher discloses method and system for processing and transmitting electronic auction information, where a user sends a bid for an item to an electronic auction system. (Fisher, 6:63 – 7:14.) Fisher fails to disclose or even suggest **“communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item,”** as required by claim 1.

Because not every element of claim 1 is disclosed in Rackson and Fisher, whether considered singularly or in combination, claim 1 and its dependent claims are patentable and should be allowed.

Claim 17 includes limitations that are similar to limitations of claim 1. Therefore, claim 17 is patentable and should be allowed for at lease the reason articulated with respect to claim 1.

**B. THE PRIOR ART REFERENCES DO NOT TEACH OR SUGGEST “A PLURALITY OF TIME-SEPARATED PRICE CHOICES FROM A FALLING-PRICE SCHEDULE,” AS REQUIRED BY CLAIM 10, WHETHER CONSIDERED SINGULARLY OR IN COMBINATION.**

Claim 10 reads as follows:

10. The method of claim 1 wherein the presenting of the item information includes presenting the plurality of price selections for the item including **a plurality of time-separated price choices from a falling-price schedule.**

The Office Action fails to discuss presenting to a user “the plurality of price selections for the item including **a plurality of time-separated price choices from a falling-price schedule,**” as required by claim 10. Neither Rackson nor Fisher, whether considered separately or in combination, disclose or even suggest **a falling price schedule.** In contrast, both Rackston and Fisher are directed at auction systems where a price, at which an item may be purchased, remains the same or increases with each placed bid. Rackson, 6:7-13. Fisher, Fig. 2. This is distinct from presenting to a user “the plurality of price selections for the item including **a plurality of time-separated price choices from a falling-price schedule,**” as required by claim 10.

Because not every element of claim 10 is disclosed in Rackson and Fisher, whether considered singularly or in combination, claim 10 is patentable and should be allowed.

Claim 16 requires a feature of “**a falling-price schedule.**” Therefore, claim 16 is patentable and should be allowed for at lease the reason articulated with respect to claim 10.

**C. THE REJECTION OF CLAIM 8 IS ERRONEOUS BECAUSE, AS ADMITTED IN THE OFFICE ACTION, THE COMBINATION OF PRIOR ART REFERENCES DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF CLAIM 8.**

Claim 8 reads as follows:

8. The method of claim 1 wherein acceptance of the reminder command in the receiving of a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the presenting of the item is independent of the receipt of any contact information from the user.

The Office Action states that the combination of Rackson and Fisher does not explicitly disclose “**wherein acceptance of the reminder command in the step of receiving a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the step of presenting the item is independent of the receipt of any contact information from the user.**” Nonetheless, the Office Action asserts that it would have been obvious to a person of ordinary skill in the art to incorporate this feature into the disclosures of Rackson and Fisher. Such assertion is erroneous because **the prior art references must teach or suggest all the claim limitations** to establish a **prima facie case of obviousness.** In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Because the obviousness rejection of claim 8 is erroneous, claim 8 is patentable and should be allowed.

**D. THE REJECTION OF CLAIM 11 IS ERRONEOUS BECAUSE, AS ADMITTED IN THE OFFICE ACTION, THE COMBINATION OF PRIOR ART REFERENCES DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF CLAIMS 11 AND 16.**

Claim 11 reads as follows:

11. The method of claim 1 wherein the presenting of the item information includes presenting the plurality of price selections for the item including a present price and at least one future price, and further including displaying a present purchase control button next to the present price and a future purchase control button next to the future price.

Claim 16 reads as follows:

16. The system of claim 12 wherein the item information area is operative to present a series of time-separated future price choices from a falling-price schedule, and wherein the future time-separated price choices are each associated with a one of the plurality of reminder request controls.

The Office Action states that the combination of Rackson and Fisher does not explicitly disclose presenting the plurality of price selections for the item including a present price and at least one future price, and further including the step of displaying a present purchase control button next to the present price and a future purchase control button next to the future price. Nonetheless, the Office Action asserts that it would have been obvious to a person of ordinary skill in the art to incorporate this feature into the disclosures of Rackson and Fisher. Such assertion is erroneous because the prior art references must teach or suggest all the claim limitations to establish a *prima facie* case of obviousness. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Because the obviousness rejection of claims 11 and 16 is erroneous, claims 11 and 16 are patentable and should be allowed.

**E. THE PRIOR ART REFERENCES DO NOT TEACH OR SUGGEST THE FEATURES OF CLAIM 12, WHETHER CONSIDERED SINGULARLY OR IN COMBINATION.**

Claim 12 reads as follows:

12. A network sales system for use in communicating with a sales server via a network, comprising:

an item information area in a first terminal and responsive to the sales server via the network, and

a plurality of reminder request controls in the first terminal for the same item identified in the item identification area and having outputs provided to the sales server via the network.

The Office Action fails to discuss the features of claim 12 including “**an item information area in a first terminal and responsive to the sales server via the network, and a plurality of reminder request controls in the first terminal for the same item identified in the item identification area and having outputs provided to the sales server via the network.**” Neither Rackson nor Fisher, whether considered separately or in combination, disclose the limitations of claim 12. Therefore, claim 12 and its dependent claims are patentable and should be allowed.

In light of the above, Applicants respectfully submit that the rejection under 35 U.S.C. § 103 has been overcome, and withdrawal of this rejection is therefore respectfully requested.

### **3. Conclusion**

Having tendered the above remarks and amended the claims as indicated herein, Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Elena B. Dreszer at (408) 947-8200 ext. 209.

Respectfully submitted,  
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